

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

AMERICAN SERVICE INSURANCE	)	
COMPANY, an Illinois insurance company,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case No.: 08 C 443
	)	
NAFTA GENERAL AGENCY, a Texas	)	Judge Coar
corporation, UNDERWRITERS MGA,	)	Magistrate Judge Keys
INC., a Texas corporation, and	)	
RAMON VILLARREAL, an individual,	)	
	)	
Defendants.	)	

**DEFENDANTS' MOTION TO DISMISS OR STAY THIS PROCEEDING**

Defendants, NAFTA GENERAL AGENCY, UNDERWRITERS MGA, INC. and RAMON VILLAREAL, by and through its attorneys, Michael J. Scotti, III, and Paul A. Duffy and pursuant to Rule 12(b) of the Federal Rules of Civil Procedure, respectfully moves this Court to dismiss this action because this Court is the improper venue for it. In support of its Motion, Defendants submit the accompanying Memorandum of Law which is incorporated into this Motion as though fully set forth herein, and state as follows:

1. The issues and parties in this case are virtually identical to those that are being litigated in two previously-filed lawsuits that are currently pending in the U.S. District Court for the Southern District of Texas (collectively the "Texas Actions"), which were initiated before Plaintiff filed this action. That Court, and not this one, is the proper venue.

2. As Plaintiff has acknowledged in its pleadings, it is actively participating in the Texas Actions. The day after the Court granted Plaintiff's request for a temporary restraining order ("TRO") on January 22, Plaintiff removed one of the Texas Actions to the U.S. District

Court for the Southern District of Texas; it removed the other Texas Action to a different court in the same district two days later.

3. In each of its notices of removal, Plaintiff acknowledged that **“venue is appropriate”** in the Southern District of Texas for the action. Additionally, Plaintiff’s decision to remove the action to Federal Court was a clear violation of this Court’s TRO, which barred the parties from “filing or instituting any new legal proceedings or action in any court or other forum concerning the parties’ rights and remedies.”

4. For all of those reasons, this Court should dismiss this entire proceeding, and deny the Plaintiff’s Motion For Preliminary Injunction Or, In The Alternative, To Extent The Temporary Restraining Order,” because venue is improper in this Court. As Plaintiff has admitted, the U.S. District Court for the Southern District of Texas is the proper venue as a consequence of the previously-filed Texas Actions. In the alternative, the Court should stay this litigation pending the outcome of the Texas Actions.

WHEREFORE, for the foregoing reasons, Defendants, NAFTA GENERAL AGENCY, UNDERWRITERS MGA, INC. and RAMON VILLARREAL, respectfully requests that this Court enter an order dismissing Plaintiff’s Complaint; denying Plaintiff’s Motion For Preliminary Injunction Or, In The Alternative, To Extent The Temporary Restraining Order; and

to grant them any and all other and further relief that this Court deems to be reasonable and appropriate.

Respectfully submitted,

NAFTA GENERAL AGENCY;  
UNDERWRITERS MGA, INC.; and RAMON  
VILLARREAL, Defendants,

/s/ Paul A. Duffy  
One of their attorneys

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